

### **REMARKS**

The Office Action of November 8, 2006 has been carefully considered. Reconsideration of this application, as amended, is respectfully requested. Support for the amendments to claim 1 are found, for example, at ¶[0019], page 5, lines 30-38 (gravity); and ¶[0022], page 6, line 33-page 7, line 11, and ¶[0024], page 7, line 30 – page 8, line 4 (controller and on/off).

As indicated above, dependent claim 34 has been added and is respectfully proposed for consideration.

#### **Telephonic Interview**

Applicants further note that the Examiner's statement at paragraph 3 on page 2 of the Office Action is apparently in response to Applicants' Interview Summary, summarizing the Examiner's statements of October 26, 2006, in which Applicants understood the Examiner to have indicated the allowability of claims 1-8, 10-24 and 26-32.

#### **Restriction Requirement**

In regard to the restriction and apparent withdrawal of further consideration of claim 33, Applicants respectfully submit that claim 1 is directed to a portable manually operated batch operation device to direct the liquid containing dissolved ozone to a point of use. Likewise, claim 33 is directed to a method of dispensing a liquid containing dissolved ozone. Claim 33, therefore, characterizes the method carried out by the device of claim 1. The mere fact that one claim is characterized as a device whereas the other is characterized as a method being carried out by the device, does not lead to a conclusion that the invention of claim 33 is independent and distinct. Absent a basis for restriction, the Examiner has failed to establish the necessity of a requirement for restriction. Accordingly, Applicants respectfully traverse the requirement, and request that claim 33 be considered in conjunction with the claims currently being examined. In the event that the new requirement for restriction is maintained, Applicants request that a basis for support of the requirement be set forth and that Applicants be permitted to respond thereto.

## Rejections

Turning now, to the office action, in addition to the new restriction requirement noted above, claims 1-8, 10-24 and 26-32 were rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement. Claim 3 was rejected under 35 USC §112, second paragraph for failing to point out and distinctly claim the subject matter regarded as the invention. Claims 1-7, 10-24 and 26-32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Burris '773 in view of Burris '993. Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Burris '773 in view of Burris '993 and further in view of Burris '043 (5,422,043) or Burris '283 (5,858,283).

### *I. Claims 1-8, 10-24, and 26-32 rejected under 35 U.S.C. §112*

Considering the rejection under 35 U.S.C. §112, first paragraph, Applicants have amended claim 1 as indicated above to recite "a liquid reservoir." Support for the current claim characterization is found in the specification (e.g., ¶[0013], p. 3, lines 17-25; and [0019], p. 5, lines 30-32) where the reservoir is described as a water or liquid source. Applicants respectfully submit that the subject matter of the amended claims is described in the specification in a manner sufficient to convey to one skilled in the art that the Applicants had possession of the claimed invention at the time of filing the instant application.

Considering the rejection of claim 3 under 35 U.S.C. §112, second paragraph, Applicants respectfully urge that the amendment to claim 3 overcomes the noted indefiniteness with respect to the recited term. Accordingly, Applicants request reconsideration of amended claim 3, and withdrawal of the rejection.

### *II. Claims 1 – 7, 10 – 24 and 26 – 32 rejected under 35 USC §103(a)*

Considering the rejection of claims 1 – 7, 10 – 24 and 26 – 32 under 35 USC §103(a) as being obvious over Burris '773 in view of Burris '993, Applicants respectfully traverse the Examiner's conclusions and the rejection. Burris '773 is cited as teaching a liquid treatment system as claimed in claim 1, for example. Burris '773 is acknowledged by the Examiner as failing to teach a non-pressurized reservoir. Moreover, Applicants respectfully urge that Burris '773 fails to teach "a controller, responsive to an on/off switch, to operate the ozone generator and the gas pumping

system continuously while the device is on," as recited in amended claim 1. Accordingly, claim 1 is urged to be patentably distinguishable over Burris '773.

Burris '993 was alleged, in combination with '773, to teach a non-pressurized reservoir. The Examiner relies on Fig. 1 of Burris '993 as teaching a non-pressurized reservoir. While Burris '993 shows a reservoir in Fig. 1, it further shows a pumping system 20, and does not disclose the recited limitation of claim 1 of a liquid passageway conducting liquid from the reservoir to the contact region solely under the force of gravity.

As neither '773 or '993 set forth the limitations noted above, they cannot anticipate, alone or in combination, the limitations of amended claim 1. Accordingly, the rejection of claim 1, and all claims dependent therefrom is respectfully traversed in view of amendments presented above.

Applicants note that the Examiner has provided conflicting rejections relative to claim 8. Claim 8 is included with the dependent claims listed at the top of page 5 of the Office Action, indicating that claim 8 is rejected over Burris '773 in view of '993. On the same page the Examiner acknowledges that such a combination "does not teach the use of a diffuser to disperse the ozone-containing gas in to the liquid." Applicants respectfully request that a subsequent communication clearly indicate whether claim 8 is rejected under 35 USC §103 over Burris '773 in view of Burris '993.

As noted previously, the rejection also fails to indicate where the limitations of several dependent claims are taught by the '773 patent. At page 5 of the Office Action the Examiner suggests that the limitations of claims 7-8, 10-14, 18-22, 24, 26-27, 30 and 32 are given no patentable weight. Applicants respectfully request that the Examiner specifically set forth where the limitations of such claims (e.g., a second pump recited in claim 7; valve of claim 12; ozone recirculation of claim 13; relief valve of claim 14; porous hydrophobic material of claims 18, 20; ozone sensor in claim 22, etc.) are taught or suggested by the proposed combination. Absent a treatment of the dependent claims in the Office Action, Applicants respectfully maintain that the rejection, as presently set forth, is incomplete. Applicants wish to further reserve an opportunity to respond to a complete rejection in the event the rejection is maintained and the basis more specifically set forth in a subsequent action.

Relative to the remaining dependent claims, Applicants respectfully submit that the Examiner has mischaracterized the teachings of the cited patents as the basis for teaching recited claim limitations. For example, the Examiner provides no support for the position that "use of a solenoid valve would give a pulsation." Moreover, this allegation is used to reject the limitation of "a pulsation device to pulsate the liquid as it leaves the controllable delivery system" (claim 15) "where the pulsation device includes an outputting pump" (claim 16) or "where the pulsation device includes a resonating structure in the liquid output line" (claim 17). Similarly, not support has been provided for the rejection of claims 23, 29 or new claim 34. In the event the rejection is maintained, Applicants respectfully request that the Examiner identify where such limitations are taught or suggested in the cited patents.

Insofar as claims 2 – 7, 10 – 24 and 26 - 32, inclusive, are concerned, these claims all depend from now presumably allowable claim 1 and are also believed to be in allowable condition for the reasons hereinbefore discussed with regard to claim 1 and as expressly set forth above with regard to certain of the dependent claims.

*III. Claim 8 was rejected under 35 USC §103(a).*

Turning to the continued rejection under 35 U.S.C. §103(a), Applicants respectfully incorporate the arguments above in traversal of the rejection of claim 1 from which claim 8 also depends. The Examiner has acknowledged that '773 does not teach the use of a diffuser. In fact, '773 teaches away from a diffuser in the use of a venturi 21 or pump 25 (or inline mixer 19) to combine and mix the ozone gas and liquid. Conversely, claim 8 is directed to a "device ... where the ozone containing gas is pumped by a gas pump through a diffuser into the liquid."

The rejection further relies on two patents in which the Applicant(s) previously taught an ozone diffuser. However, Applicants continue to urge that the rejection sets forth no basis that would suggest the modification of the '773 patent to add the recited element. Rather, the rejection, and the Examiner's reply, simply set forth a conclusion that because a diffuser is taught in patents other than Burris '773, it would have been obvious to make the combination and requisite modification. The Examiner urged that "in this case Burris '043 is used to illustrate that the use of gas diffusers have been known in the art..." While such a statement may be true, it fails to give rise to a suggestion for modification of the Burris '773 teachings. Mere illustration of what is known in the art is not believed to be the standard for

obviousness. Absent a teaching or suggestion for the proposed combination or modification, or the motivation for such a modification, it continues to appear that the instant application has been used as the "recipe" from which elements of the various patents are being combined. Accordingly, the rejection of claim 8 is respectfully traversed.

In view of the foregoing remarks and amendments, reconsideration of this application and allowance thereof are earnestly solicited. In the event that additional fees are required as a result of this response, including fees for extensions of time, such fees should be charged to USPTO Deposit Account No. 50-2737 for Basch & Nickerson LLP.

In the event the Examiner considers personal contact advantageous to the timely disposition of this case, the Examiner is hereby authorized to call Applicant's attorney, Duane C. Basch, at Telephone Number (585) 899-3970, Penfield, New York.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'D. Basch', with a stylized flourish at the end.

/Duane C. Basch, Esq. Reg. No. 34,545/

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